

November 2, 2018

VIA EMAIL to [r5foia@epa.gov](mailto:r5foia@epa.gov)

Regional Freedom of Information Officer  
U.S. EPA, Region 5  
77 West Jackson Boulevard (MI-9J)  
Chicago, IL 60604-3590

**RE: Freedom of Information Act (“FOIA”) Request for meeting records between Wisconsin DNR, Wisconsin DATCP, and U.S. EPA**

Dear FOIA Officer:

In accordance with 5 U.S.C. § 552, Midwest Environmental Advocates (“MEA”) and Food & Water Watch (“FWW”) request all records, including meeting notes and communications between the U.S. Environmental Protection Agency (“EPA”) and the Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”), the Wisconsin Department of Natural Resources (“WDNR”), and/or Governor Scott Walker’s office, relating to the potential transfer of concentrated animal feeding operation (“CAFO”) Wisconsin Pollutant Discharge Elimination System (“WPDES”) regulatory authority from WDNR to DATCP. Our request encompasses in-person and telephonic meetings or communications between EPA and **any or all** of these Wisconsin entities between May 15, 2018, and the date of this request. To minimize EPA resources needed to respond to this request, Requesters would like to receive records electronically whenever possible.

MEA and FWW request all records of communications included in this request, including, but not limited to, emails, attachments, correspondence, letters, memoranda, telephone recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, and chats.

If the EPA invokes a FOIA exemption to deny all or part of this request, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger including:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld record. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

I hereby request that the EPA waive the fees associated with this request. The purpose of FOIA’s fee waiver provision is precisely to facilitate access to agency records by citizens groups such as MEA; indeed, Congress has recognized the importance of FOIA to the ongoing missions of

public interest organizations who seek to ensure the proper function of government. See Better Gov't Ass'n v. Dep't of State, 780 F.2d 86, 88-89 (D.C. Cir. 1986).

The EPA typically looks to six (6) factors to determine whether the disclosure of the information is likely to contribute to public understanding of the operations and activities of the government; see 40 C.F.R. § 2.107(l). Each factor is discussed below.

A. *The subject of the request concerns identifiable operations and activities of the federal government.*

The subject of this request concerns the progress of the transfer of CAFO WPDES regulatory authority from DNR to DATCP. The EPA, as the primary entity charged with the implementation and enforcement of the Clean Water Act ("CWA"), must ensure that agencies in states, like Wisconsin, that have delegated National Pollutant Discharge Elimination System permitting programs operate in accordance with federal law. It is the performance of this oversight function by the EPA, and the potential transfer of authority from DNR to DATCP issuance of permits and the EPA's oversight authority, that is the subject of this request.

B. *The requested records are meaningfully informative of government operations.*

The requested records contain information detailing the EPA's communication with DNR and DATCP about the progress of the potential transfer of the CAFO WPDES program. Even though DNR currently has authority over the CAFO WPDES program, the EPA plays an important oversight and enforcement role under the Clean Water Act ("CWA"). Understanding the communication between the EPA, DNR, or DATCP and the progress of the transfer of this regulatory authority, is essential to the public.

The EPA has a variety of mandatory and discretionary duties with regard to Wisconsin's implementation of the WPDES program. Most importantly, the EPA must ensure that the program is meeting the fundamental requirements of the CWA. Release of the communications requested herein will shed light on the EPA's exercise of authority over Wisconsin's WPDES program.

C. *Disclosure of the requested records will contribute to the understanding of the public at large.*

The disclosure of the requested communications will further the understanding of the public at large because the requestor has the intent, expertise, and means to distill and disseminate the requested information to the public.

MEA is an organization that has considerable expertise in CAFO WPDES program issues generally. MEA has identified water pollution discharges as an area of concern, and MEA is committed to strengthening the regulatory authority of the WPDES program and furthering enforcement of existing law governing these kinds of discharges. MEA has worked

collaboratively in the past to educate the public of the environmental impacts of the WPDES program, and the need for strong regulation.

Additionally, MEA has the legal, policy, and technical experts on staff, with broad experience in the CAFO WPDES program and its implementation, who will distill the contents of the records and provide that information to the public at large. MEA maintains a list of activists, concerned citizens, donors, and members who are themselves interested in learning more about regulatory authority issues. The information gleaned from the requested records, once analyzed, will be disseminated to these individuals and organizations.

*D. The contribution to public understanding will be “significant” and the level of public understanding will increase as a result of disclosure.*

There has been significant interest in the potential transfer of CAFO WPDES regulatory authority from DNR to DATCP among both the media and the public. The role of the agencies in the regulation of the CAFO WPDES program are vital to the public’s understanding of government authority throughout the state. The records sought will contribute significantly to the public’s understanding of the operations and implementation of the CAFO WPDES program.

*E. Disclosure of the information is not primarily in the commercial interest of the requester.*

As a non-profit organization, MEA does not have any commercial interest in the communications requested herein. We have a public interest mission to ensure clean water, air, land, and government for this generation and the next.

*F. The ability of the requester to disseminate the information.*

MEA has a page on its website to post responses to record requests such as this FOIA request to the EPA. That information will be available to the public through the Google search function on our website. See <http://midwestadvocates.org/foia>. We also regularly blog and send out email alerts to inform the public about opportunities for public comment. In these blogs and email alerts, we link to other information and resources on our website such as the information that will be provided on our Open Government page.

Please contact me at 608-251-5047, extension 2, if you need to discuss any aspect of my request. I anticipate receiving your response to my request within twenty days, as required under 5 U.S.C. § 552(a)(6)(A).

Thank you for your consideration of this request.

Sincerely,

Ry Carpenter  
Community Services Coordinator  
Midwest Environmental Advocates, Inc.